



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

ART. II. — *The Papers of JAMES MADISON, purchased by Order of Congress, being his Correspondence and Reports of Debates during the Congress of the Confederation and his Reports of Debates in the Federal Convention, now published from the original Manuscripts deposited in the Department of State, by Direction of the Joint Library Committee of Congress, under the Supervision of HENRY D. GILPIN.* 8vo. Vols. I. II. III. pp. 580, xxii. ; 662 ; 382, ccxvi. Washington : Langtree & O'Sullivan. 1840.

NOT contented with a life of eminent usefulness to his country, in the course of which Mr. Madison passed with honor through the most exalted and responsible public stations, he determined to signalize the moment of his death by the communication of these papers to his countrymen. How much he valued them himself, was shown by the care which he took in preparing them for publication. How much he believed the people of the United States would value them, he proved by the testamentary provision which he made respecting them. He conceived that such would be the curiosity to read them, booksellers would vie with each other in the endeavour to secure the copy-right from his widow, and hence that it was a perfectly safe calculation in him to charge upon the sale of it legacies to the amount of twelve hundred dollars, whilst leaving the residuary nett proceeds to Mrs. Madison. He was greatly mistaken in this expectation. In the grand lottery of book publication, it is not certain that a meritorious work will always turn out a prize. And publishers have, in America as well as elsewhere, so often realized this truth, that they are excusably slow in venturing upon new and untried experiments, however promising they may appear. The consequence in this instance was, after it became certain that private enterprise would not undertake the publication of the work, that Mrs. Madison determined to offer it to Congress and to the Nation. By them it was subsequently purchased for the sum of thirty thousand dollars, and under their authority it has now been published. We are glad that this disposition has been made of it, as well because of the fitness that the original manuscripts should make a part of the National Archives, as because by it the services of a compe-

tent and responsible Editor were secured to their publication in a proper form. Mr. Gilpin appears to have done every thing in his power to facilitate the understanding of the text by the public.

But although we attach very great value to the Madison papers, we are by no means disposed to go the length of Mr. Robbins, the Senator from Rhode Island, who in his place described them as "the most valuable work that has appeared since the days when Bacon gave to the world his *Novum Organon*." This is a fair specimen of the magniloquence for which this country is so remarkable, and which has its focus in the Congress of the United States. It is altogether too long a period of time to look back upon, and too many profound men and brilliant geniuses have lived and written in the interval, for us to like to venture upon such a comparison. Besides, it appears to us to be doing great injustice to the work and its author, to take it up in this tone. It is neither a work of genius, nor does it treat very profoundly of any department of human knowledge. Its value, so far as we can understand it, is of a peculiar and somewhat unique character. It is the record of an extraordinary coincidence, in the same assembly, of men of practical skill, legislative talent, and disinterested purposes, such as the world had not often seen before, and such as it may never see again. The result was a written form of government which has already braved half a century of trial, and which bids fair for some time longer to be reckoned as a solitary exception to the rule in regard to similar instruments. The process by which this remarkable instrument was produced in a country where so many elements have always existed, and still exist, to defeat it, will always be deserving of profound study by all who interest themselves in political science. But we ought, at the same time, carefully to guard ourselves against the supposition, that the same measures which brought this assembly to a happy conclusion, could be repeated at pleasure with similar results upon any future occasion. It is very doubtful whether an equally good constitution with that which we are now considering, could now be made, notwithstanding all the knowledge we have acquired of its operation in the lapse of years. And it is still more doubtful, whether the very same men could or would have made the very same instrument at any other moment, before or since, than that in which they did make it, or

whether, if they had, the majority of the United States would at any other time have assented to it.

So much of a lucky accident do we consider the formation of our government, that we confess ourselves very incredulous as to the value which these papers can ever possess to any one hereafter, who shall seek in them for guides to action upon some future contingency that may occur of the same kind. Their great value appears to us to consist in the lesson they teach us, respecting the necessity of maintaining the government we have, and in the opportunity they furnish to later generations of understanding the principles which were intended to regulate its application to human events ; but in this they are of value to citizens of the United States, and to them only, of all the human race. One great merit of the Constitution is, that it was so well adapted to a preëxisting system of confederated States, each already possessed of an organized government of its own, as to combine them all, with as little of disturbance to established ideas and of friction in the common movement of the whole, as could reasonably be expected to occur. But this is only a relative merit. It is not positive virtue, which should recommend the system to be introduced in other States that had never been subjected to the inconveniences of a confederation. If it became a question to any nation about to change its form of government, whether, for the sake of realizing the advantages that accrue from a constitution like that of the United States, it would be desirable to organize twenty or more distinct and independent States in the various sections of the country, for it to act upon, we think it would be easy to foresee that the decision would not be in the affirmative. The experiment has failed thus far wherever it has been tried. And the conclusion to be drawn is, not that the Constitution of the United States is, in the abstract, the most perfect system of government conceivable for all countries, but that it is admirably suited to the precise purpose in America for which it was created. If you did not presuppose the peculiar character of the people to be governed, and then presuppose the exact organization into separate social communities called *States*, which exist here, the constitution would be of scarcely more worth than the thousand and one paper forms which have hardly outlived the date of their creation. If we are correct in our conjecture, then, it is the fitness of that instrument which is more to be considered than its abstract excellence. Hence the Madison Papers

will scarcely teach the inquirer after truth any new and marvellous axioms in the science of government, so much as the application of old and established ones to the peculiar condition of a people already organized into separate communities, and seeking no more than for certain definite objects, expected to be gained thereby, to engraft upon their established system a few features of consolidation.

Let no one, then, take up the Madison Papers with any hope to find general receipts for constitution-making in its pages, or materials with which to cultivate a captious and amendment-seeking temper towards our own. If he should, then will he be converting the wholesome nutriment of the work into virulent poison for the body politic. No. Let him rather seek it as a searcher in history for examples of the difficulty which attends the establishment of all great political innovations ; and, having perceived the manner in which that difficulty was in this one instance overcome, let him be wary how he attempts to overturn, to alter, or even to modify the results, he for one is so fortunate as to enjoy. It is doubtless true, that there are many imperfections in the constitution, which it might be advisable to remedy if possible. One of the greatest merits of its framers was, that they did not pretend that it was a perfect instrument. They recommended it simply as the best that could be expected to be gained at the time ; and it doubtless was the best. What is not often the case, it has worked in practice far better than was anticipated ; so well, indeed, that we think it wholly unadvisable, in quest of fancied improvements, to run the smallest hazard of doing it permanent injury.

It is far more easy for us to conceive of the formation of a good plan of government, like that of the constitution of the United States, by a select number of wise and patriotic individuals, than that, when formed by them, the people of the several States of America should have deliberately assented to its adoption ; and even more than this, that after it had been adopted, this bit of paper should have continued a permanent rule of action to millions of beings for a period of time now exceeding half a century. If there were no other source of interest in the Madison Papers, these considerations would alone be sufficient to excite it in us. The problem of man's capacity for self-government upon an extended scale, still depends for its satisfactory solution exclusively upon this exam-

ple. It is then natural, that we should turn to the documents which relate to the commencement of the experiment with eager curiosity. The men who made the constitution are no longer here to explain the mode in which they arrived at their first result. We must now rely for instruction upon the expositions they may have left behind them. Among these, the work now under discussion must always claim a high rank, as coming from one of the leading minds in the formation of it, and as embracing the opinions of all the others which were engaged in coöperation. It may follow, that posterity will owe to Mr. Madison a larger debt of gratitude for his posthumous publication, than he created by his valuable services whilst in public life. The most brilliant productions of existing wisdom or genius not infrequently lose all their value with the departure of the spirit that set them into activity. The principles upon which the value of a form of government rests, must be transmitted with it, or it will soon change its character. The constitution of the United States will become a piece of parchment, whenever its living force in the breasts of the American people shall have passed away.

But what is that force which many are so fond of lauding, without ever taking the pains to comprehend an atom of its nature? We hold it to consist in that voluntary abnegation of power by masses of men for certain useful ends, which in all other forms of government is compulsive. In short, *Self-restraint*. The records of time furnish no instance of successful resistance to the passions which ordinarily exercise the most unbounded sway over the popular heart, like that which moved the people of these States to adopt the Constitution. There have been innumerable examples of resistance to oppression when exercised by others; very few, of surrender of the means and the will to exercise it when they are actually possessed. The revolutionary war which established our Independence was a commonplace struggle in comparison with that which erected our present form of government. The one was in accordance with that love of the largest liberty, natural to mankind. It appealed not to the reason, but to the feelings. It was the offspring of noble impulses, which might not have required much of regulating judgment. But the spontaneous sacrifice of power when once acquired, the cheerful assent to a vigorous plan of self-control, involved an exercise of powers both intellectual and

moral, and a rule over resisting passions, far more difficult to execute, as it was, we think, more creditable to accomplish.

It is doubtless true, that the knowledge of the principles of popular government had been long practically understood in America, under the forms which had been established by charters granted from the mother country to the colonies. But these were, after all, systems imposed, and not originated. And however directly they might lead to the maintenance of the social system, much as it had been in the several States, they furnished no precedent for the union of those States under a form in many points of paramount obligation. The common cause of Independence for a moment joined them together in a common Declaration, but this was a very different thing from a permanent government. The necessity of combining to resist the common enemy in the most effective possible manner, made the want of it immediately perceptible. But no sooner did the representatives of the States in Congress turn their attention to the construction of a systematic union, than the obstacles to their success became on all sides fearfully manifest. The resolutions organizing committees for the purpose of preparing a Declaration of Independence, and of digesting a frame of government, were passed by the Congress on the same day, the 11th of June, 1776. The first instrument was reported, considered, and adopted, by the 2d of the following July. But the second was not reported until the 12th of that month, was not adopted by Congress until the 7th of November, 1777, sixteen months afterwards, and was not ratified by the Legislatures of all the States until March, 1781. Three or four years were spent in discussing it, and the final ratification of Maryland took place long after the minds of many had become made up, that, although it might be the best thing they could get at the time, it was not the less a perishing device.

It is no doubt true, that this long delay was not wholly owing to the character of the proposed system of confederation. Both the State and general Congresses were engaged during the period in question in the arduous duty of defending the country from the enemy, who at times pressed so hard upon them as to make all other considerations secondary to that of their own safety. But if this state of things had a tendency on the one hand to delay action upon the new frame of government, it presented on the other, the strongest pos-

sible inducements to secure its acceptance at last. Yet such were the obstacles in the way of all agreement, and so great was the unwillingness of the several States to part with the power they possessed, that it may reasonably be doubted whether any thing short of the enemy thundering at the gate would have overcome them. There were jealousies of the large States on the part of the small ones, the opposition between slavery and free labor, the conflict of right to the unoccupied territories, the fear of consolidation, and, above all, the terror of a new and untried experiment, each operating with so much power, it is rather a matter of surprise that the Confederation was accepted at all, than that it was disputed so long. That instrument purported to be a compromise between all interests. It was nothing more than an attempt to retain a form of union without conceding the means to establish one. Yet, feeble and inefficient as it was, it made a necessary and very important step to the accomplishment of better things which would never have been brought about without it. It may be considered as filling up the transition-state of the country between its infancy and its manhood.

The history of the confederation is by far the most important, though we believe it to be the least studied, portion of our annals. We call it important, because it is the account of an attempt to reduce to practice a particular theory respecting government, which has always been, and for aught we know will always be, a favorite with young minds in the United States. The germ of our party divisions must be found here. It is so fascinating an idea, that a political organization wielding power is an evil, and one which is avoidable by those who are able to govern themselves, that we are never surprised at perceiving the extremes to which the doctrine has been sometimes pushed. For this cause it is that the road to popular favor in the United States has always been by the abnegation of power ; and that to an extent sometimes much further than has proved advantageous to the country. But the great example of the practical operation of such a doctrine must be studied in the years of the Confederation. That system failed, because it was deficient in the indispensable vital energy which must necessarily reside in every form of government, to make it of any use to keep up one. It failed, because the jealousy of power that is liable to abuse had been carried so far as to cut off even that share of it



which might have been usefully exercised. The separate States, acting in reference to each other rather as independent sovereignties than as divisions of a homogeneous people, conceded to the common cause nothing which they could with any plausibility retain to themselves. And even the concessions, which they were persuaded to make, proved nominal, for the reason that they granted no means of coercion over themselves in cases when they refused to abide by them. The Congress in which the national power was vested was a deliberative body endowed with very feeble executive powers. There was no distinct national executive department, and no judiciary. The representatives of the States sat in cónclave as fractional parts of the single vote each State was equally able to give, and performed their duty of recommending measures which it was never within their power to cause to be completed. They disputed with each other, they exhorted their constituency, sometimes they entreated and at others implored, but it was all of no avail. The state wheels would not move regularly when there was no force that could be brought to bear directly and simultaneously upon all, and the natural consequences of irregular motion ensued, disorder, discontent, and ultimate stoppage of the whole. The violence of war introduced anarchy enough in the United States while it lasted, but it was reserved for the establishment of peace to prove how fast the road to social disorganization can be travelled, when the people who hold the power are not willing to part with it in quantities sufficient to do them any good.

The Confederation may be considered as having fully illustrated by a ten years' operation the fatal error of its conception. To the most intelligent and best informed classes of the community, less than one half of that period had been fully sufficient to make it apparent. But popular prejudices are always strong, and that in proportion as they are established upon some general axiom. The war of the Revolution had been a war for independence. And independence was synonymous in the minds of many with the largest liberty. Not absolutely with that kind of liberty which runs into open licentiousness, for that has never at any time been a favorite in America, but with as much freedom of individual action as can be reconciled with a social state. The idea of concentrating a new power, coextensive in some respects with that

which had just been thrown off, was not a very acceptable one. And it was nothing but the slowly extending consciousness of the deplorable state of things that was occurring by reason of the absence of it, which gave it any credit. The confederation had in its brief career been able to create a common debt; the States had incurred debts during the war; and the citizens in their private capacities had done the same, whilst engaged in the very necessary but unproductive duty of defending their rights. The industry of the country was in a state of stagnation. There was a necessity, that, in order to the liquidation of all these demands, it should be set in motion, and nothing could give it wholesome motion but that which was not then in existence, power in a national form of government. The people, not yet aware of the true nature of the disease that afflicted them, staggering under a burden too heavy for them to bear, inclined their ears as they always will in similar cases to the voice of demagogues. These will always be at hand in times of suffering, with nostrums of quackery to relieve the symptoms, and yet give greater ultimate violence to the complaint. What an awful catastrophe seemed impending over the brilliant outset of the Revolution. The courts of justice, through which the recovery of debts is usually effected, were threatened throughout the land. Bands of men were assembled in the Eastern States, who were working themselves rapidly up to the defiance of all law. Murmurs against the very appearance of aristocratical forms in the higher branch of the legislature of the States, were but preludes to a gathering storm directed against all inequality in the possession of property whatsoever. The foundations of the social system were in danger, because the people knew themselves to be wretched, but they did not know and were not yet in a temper to learn, what it was that was requisite to a reversal of their unfortunate condition.

It was a dismal hour for those patriots, who had led in the armies and in the councils of the country during the agony of war; dismal, because the reliance which they had had upon the reason of the people was fast sinking to nothing, under the demonstrations that were making before their eyes of the popular madness; dismal, because it seemed as if their very exertions in the common cause were about to be considered as a ground of reproach, and the claim to a pitiful compensation, to save them from starvation, was to be regarded as a

desire to impose an odious and unjustifiable public burden. It seemed as if the ignorant and the desperate, with no recommendation to credit but that of being brawling demagogues, were about to usurp the stations that had so far been filled by integrity and capacity. On every side was gloom. Great Britain was chuckling over the spectacle ; France was filled with mortification ; and all the other great powers of the world were looking with contempt upon a quarrelsome mob on the other side of the Atlantic, which, like a spoiled child, had whined and roared, and fought for the possession of at rinket, the true use of which, when obtained, it was unwilling or unable to learn.

In other countries a state of things like this would have ended in the establishment of an effective military monarchy. In America the eyes of the people were opened before the occurrence of any such necessity. The insurrection in the western part of Massachusetts carried with it a wholesome lesson to the minds of all thinking men throughout the Union. Hence it happened that all seemed lost, at the very moment when the causes were most rapidly maturing for a restoration. There were no military adventurers at once able and vicious enough to take advantage of the anarchical spirit, nor, even if there had been, is it probable they could have made much progress with the malecontents. These were poor and wretched, but they were not desperate. They were pushed to excesses by the pressure of the burdens that had fallen upon them, but they were not inclined to follow blindly the suggestions whatever they might be of any adventurous leader. Their rising was rather tumultuous than an organized plan, and their chiefs were men selected from among themselves with little regard to fitness for the duties they were expected to perform. It was a natural consequence, that, upon the first appearance of an organized resistance by the civil authority of the State, the assemblage dispersed. It thus did little mischief, but on the contrary a great deal of incidental good. It proved the death of the Confederation. The experiment had been carried far enough for every useful purpose. To persevere in it further was clearly a suicidal attempt. Nothing remained but to make a new effort at social organization. And in this all the ability, and the honesty, and the good sense of the country were now ready to combine. The fact was apparent, that if the States

should fail in devising some method of self-government that deserved the name, the independence they had expended so much blood and treasure to acquire was about to prove a misfortune instead of a blessing, and that the tyrannical exercise of power by Great Britain, which had been thought dangerous enough to justify resistance to the death, merited the title of maternal fondness in contrast with the license that seemed likely to succeed it. But this conviction, which was now generally established, had been wrought only by the experiment which had been made of Confederation. And it is in this point of view, that that plan must be considered as having served a highly useful purpose. Its failure satisfied the minds of a majority, that power must be actually vested in a central system, a belief which could make its way in America only by the strongest proof of necessity. But the fact that it did make its way in time for the common safety, constitutes a stronger argument in support of popular government on a large scale than all the abstract propositions that have ever been uttered.

Yet it must not be imagined that this general belief which had obtained, of the necessity of adopting a new form of government, extended to a proper idea of the degree of power which it was expedient to infuse into it. There were and still are many good citizens in the United States, who are so in love with the idea of liberty as to be always averse to a surrender of an effective portion of it. No one who knows the diversity of sentiment that prevails wherever there are numbers of human beings, will fail to understand the difficulty in the way of bringing a majority to agree in any definite remedy, or upon any single course of measures, to check the public distress. Neither was it until after long continued correspondence and repeated trials, that the same individuals who had gone through the heat of the revolutionary contest were enabled to persuade their countrymen to intrust them with the necessary discretion to devise one. It was a great step towards a brighter period when that confidence was finally given ; for it showed, that, whatever might be the temporary caprice of the many, they still retained a capacity to appreciate the characters of those who most deserved their esteem. The moment of public danger is generally the test of popular opinions respecting men. In such a moment, the election of delegates to the Federal Convention that had

been agreed upon was entered upon in the States. The consequence was the choice of the best men, and the formation of an assembly as remarkable as can be found in the history of deliberative bodies. We call it remarkable, but not so much for genius, or eloquence, or learning, though it was not without all these attributes in some of its members, as for the spirit which animated its deliberations ; a spirit filled with the difficulties of the task imposed, yet resolved to do all that could be done to overcome them ; a spirit conscious of the responsibility which rested upon the movement, and of the fatal consequences that might succeed its failure. The result was the Constitution of the United States.

But this result was not the work of any single man of the assembly. There was doubtless great inequality in the shares in which the several members contributed to it, but the fact, we think, is established, that almost every one contributed something. Conflicting interests often hit upon intermediate propositions, the merit of accepting which belongs to both, and that of originating them can yet be claimed by neither. Many of the most marked features of the instrument grew under the compound handling to which they were subjected, and all visibly improved as they passed along. How could such a process have been carried on, if the members had not been beforehand imbued with the spirit of self-sacrifice of opinion, and had not with great singleness of mind devoted themselves to execute the solemn purpose for which they had been called together ? There were not many subjects for discussion, upon which a tolerable degree of unanimity could be naturally expected ; there were several, upon which the States were arrayed in diametrical opposition to one another. The fears of the small States were at war with the hopes of the large ones ; the pride, with the jealousy, of state sovereignty ; the navigating interests of the Northern, with the slave labor of the Southern States. And last though not least, the dread of an unbridled democracy had a sway not less marked, than that which saw in every concession of power an advance to consolidation and monarchical rule. There was scarcely a shade of opinion existing in America upon government, which had not its representation in the Federal Convention, from the ultra democracy of a single representative body, combining in itself all the attributes of sovereign power, which was the favorite doctrine of Dr. Franklin, to

the monarchical tendencies of Alexander Hamilton ; from the state rights jealousy, which impelled Luther Martin and Judge Yates to retire from the assembly, to the extreme of consolidation and centralism in the person of Gouverneur Morris. Yet, strange as it may seem, these apparent causes of dissension proved in the end highly beneficial to a harmonious termination of the labors of the convention. For being nearly all of them guided by the right spirit, these differences of opinion were fused into the common result, in such a manner as to perfect the compound far beyond the point, to which it is likely that it would have been perfected, had a single ingredient mentioned been omitted.

It was unquestionably very proper for the convention to decide, in the peculiar circumstances of their case, upon closing their doors and forbidding any divulging of their proceedings. And it was very well that no report should be given of these to the world, for some time after the Constitution had become the guide of national government. But we confess we see no reason why the same injunction of secrecy should for ever be maintained, or why Chief Justice Yates or Mr. Madison should incur any censure by retaining in their hands, for ultimate publication, the notes they had taken of the debates. We should not have noticed this point, if it were not that we had perceived, in a lately published volume of the *Life of Hamilton*, some attempt to blame Mr. Madison for his conduct in this particular. How far the judgment of the writer may have been biased to favor this opinion, by certain passages deemed unjust to and misrepresenting the sentiments of Mr. Hamilton, we will not undertake to say. There doubtless must be some allowance made in this case for the errors which reporters always commit, by misunderstanding the meaning or spirit of the words they hear from others. And if the reports of Mr. Madison of the debate in the Federal Convention, so far as they affect the partners of his labors, were, like his reports of the Congressional debates under the Confederation, the only testimony extant respecting them, we should feel an inclination to enter a caveat against placing full dependence upon them. Fortunately, however, the unintentional and inevitable errors which he might have committed can be subjected to a tolerable test, by comparison with the notes of the other reporters, with the speeches made by members of the Federal Convention in the assem-

blies afterwards held to approve or condemn their work, and with the numbers of "The Federalist." Those who take delight in tracing discrepancies will find a few by following the mode here pointed out. Mr. Gilpin has done all that an editor should do to facilitate such investigations. Yet, after all, they establish nothing of importance against the general credibility of either reporter. So far from it, the coincidence in the adoption of particular phrases or modes of speech, which is often discovered to exist in the pages of Madison and Yates, is hardly so convincing a proof to us of the genuineness of their reports, as the instances that can be found of casual disagreement between them. The well-known law of evidence on this point will dispense us from pursuing the subject, further than to exonerate Mr. Madison from all suspicion of design to misrepresent the sentiments of any of his colleagues.

Let us now turn our attention to the great points of interest in these volumes. The first in time, as in importance, relates to the principle at the bottom of the change in government about to be carried into effect. Scarcely had the Convention become organized, before Mr. Edmund Randolph, one of the delegates from Virginia, brought forward the doctrines advocated by his State as a basis of the new system, embodied in a series of fifteen resolutions. Mr. Charles Pinckney, of South Carolina, followed him with a regular form of a constitution. We do not believe (by the way) that the paper which appears as his in the Journal was that form as he first presented it, for it bears too many marks of the maturing wisdom of an advanced stage in the sessions. However, that is not material to the present purpose. The great feature of reform of the vicious principle that dictated the articles of Confederation, was the same in both of the propositions, made on this day. There was no longer to be a federal compact between States, but a compact between the people of those States. The intervention of sovereignties between the individual citizen and the national power, was to be done away with. This was a proposition very broadly laid down by various members coming from opposite sections of the country, the acknowledgment of which was indispensable to progress in the new undertaking. That it might be most distinctly presented, Mr. Randolph, on the day after his first movement, concentrated the spirit of it into three resolutions. These were as follows ;

1. "That a union of the States, merely Federal, will not accomplish the object proposed by the articles of Confederation, namely, common defence, security of liberty, and general welfare.

2. "That no treaty or treaties among the whole or part of the States as individual Sovereignities would be sufficient.

3. "That a *national* government ought to be established, consisting of a *supreme* Legislative, Executive, and Judiciary."

These three propositions contain an explicit renunciation of all the false doctrine of the articles of Confederation, and contemplate the change from federation to union. Yet singular as it may seem, we do not perceive in the discussion of them that took place, a single sentiment in direct opposition. The only objection raised against them was made by Mr. Charles Pinckney, who had shown himself, on the previous day, very far from dissentient to the principle involved. Such had been the jealousy of power in several of the States when giving instructions to their delegates, that he appears to have apprehended some danger, lest the adoption of such decided resolutions might be construed as a dissolution of the powers under which the body was acting. These powers, in a few instances, extended only to the revival of the old system, and not to its total subversion. Neither the Journal nor Mr. Madison explains the action had in the premises so clearly as Chief Justice Yates. According to him, Mr. Pinckney considered the adoption of the first resolution as tantamount to destroying the Convention. A fear lest it might be so construed by the States, led to the tacit postponement of the two first resolutions. The third, which provided a new disposition of the powers of government, was discussed more particularly upon the use of the words *supreme* and *national*; words, it should be observed, that conveyed in an indirect form the sense of the preceding resolutions. Mr. Read, of Delaware, proposed a substitute omitting those very significant words. But so decided was the opinion of the Convention upon the point, that his change met with no favor at all, and the original resolution was adopted, six States voting for it; one only, Connecticut, against it; and New York being equally divided.

Such was the first decision of the Convention; a recognition, by most of its members, of the position, that the new system, though not intended to annihilate the state sovereignties, was



nevertheless in all cases of collision to be of superior obligation. From the unanimity with which it was voted we ought not however to infer, that there was no disposition in many members of the body to resist it. Most probably there was somewhat of legislative tactics used, in order to avoid fighting the real battle upon unfavorable ground. The naked declaration, that a supreme national government of three branches ought to be established, could not present points half so advantageous for attack, as the question, that must necessarily grow out of its adoption ; the distribution of power among the departments thus to be organized, as well as the share of it which it was advisable to grant at all. Upon these it was that the true contest was decided. The articles of Confederation had recognised the sovereignty of every State, by giving to each an equal share of weight in the national councils ; so that the small communities of Delaware and Rhode Island were exercising under them a control over the public affairs in all respects as great as Virginia, Pennsylvania, or Massachusetts. They had wrung this equal privilege from the necessities of the country during the war ; and it was from fear lest they should lose it by a change, that they manifested great aversion to any stronger measure than a mere revision of the old system. On the other hand, the large States were determined to do away with that unequal feature in the previous government first of all. An ardent struggle ensued. On the 1st of June, Mr. Patterson, of New Jersey, brought forward a string of propositions, understood by the Convention to be the *ultimatum* of Connecticut, New York, New Jersey, Delaware, and Maryland, five out of the twelve States represented. These propositions contained a substantial enlargement of the national power, and a distribution of it into three branches, instead of the old form of a single assembly ; but they went no further. The radical error of the system was sedulously preserved, by which the States were made the superior, and the federal government subordinate. The great question was thus brought fully before the Convention, and was discussed on both sides with all the ability which distinguished it. Judge Patterson, Mr. Lansing, of New York, and Luther Martin exerted themselves to the utmost to sustain the parts of the old fabric which had not actually crumbled into dust, whilst Judge Wilson, Mr. Hamilton, and Mr. Madison, as strenuously contended for their demolition.

The vote however proved that seven States, among which Connecticut ranged herself, were resolved to adhere to the new system of Mr. Randolph and of Virginia, whilst only three continued their faith in the old one, as revised by Mr. Patterson on behalf of New Jersey. That this State and Delaware and Maryland should have clung with tenacity to a plan of government, by which they enjoyed a degree of power entirely disproportioned to their population or resources, is not at all surprising. But it denotes a singular want of foresight in the delegates from New York, that the earnest and eloquent remonstrances of Hamilton could not avail to prevent their casting their weight into the scale of the small States.

It has been frequently the misfortune of that great State, to be embarrassed by the threads which even lilliputian politicians can wind about the stoutest frame. But although in a minority which neutralized his vote, Mr. Hamilton was nevertheless of very great service to her by labors in the Convention, for which New York owes him a debt she never has been magnanimous enough to acknowledge. Although the decisive vote upon the resolutions of Mr. Patterson put an end to all hope of retaining the distinctive principle of the old system, a confederation of sovereign States, there was yet room to engraft upon the new one such features of it as the lovers of State sovereignty were most unwilling to see destroyed. Among these none was considered of more consequence, than the right of every State to an equal vote in the legislative branch of the government. The attempt to insist upon it, gave rise to the most vehement contest that occurred during the session of the body. On the one hand, Wilson, Madison, and Rufus King, each representing a large State, advocated a representation proportioned to numbers, whilst, on the other, Judge Ellsworth, Mr. Lansing, and Luther Martin sustained the old practice of voting by States, each of them having but a single vote. The dispute upon this question threatened at one moment to break up the assembly. It was at the close of one day of the warmest discussion, the 28th of June, that Dr. Franklin was induced by the hopeless aspect of their affairs to make a motion that "prayers imploring the assistance of Heaven and its blessings on the deliberations be held every morning." The movement, though doubtless sincere, had, considering the source

from which it emanated, rather too much of dramatic effect for the taste of a majority of the members. But the hour was a gloomy one, and it would have done them no discredit if they had adopted it. They decided otherwise; and yet the conciliatory spirit, which religious feelings properly cherished might have furnished in abundance, came to them for once from considerations of temporary policy. A slow and painful process of reciprocal concession, at one moment broken off only to be resumed with more earnestness on the next, ended in the formation of the legislative department as it now stands in the Constitution; a complicated piece of mechanism, by which numbers are allowed to preponderate in the popular branch, but not without some material qualifications, whilst, in the other, each of the small States is secure in the possession of an equal share of weight with each of the largest.

Yet if we, at this time, compare the apprehensions which those small States professed to entertain of the consequences of conceding to the large ones the principle of representation proportioned to numbers, with the results of fifty years' experience, we can place no very high estimate upon their sagacity. The idea does not appear to have occurred to most of the gentlemen, that, with the cessation of the rule of voting by States, the delegations of the large States would be likely to vote, not according to the wishes of a whole State, but according to the predominating feeling of a small district in a State. The effect of this would naturally be, and it has generally been found in practice to be, to divide the delegations of large States in opinion upon questions of public interest, to so great an extent as, in a great degree, to neutralize their force. The great State of New York, for example, which sends forty representatives to the Congress of the United States, does now show, and has shown, for several years, its numbers almost equally divided upon every test-vote on public affairs. So that, in point of mere numerical weight in the decision of questions, it hardly furnishes more than the little State of Rhode Island, which sends but two. Then, as it respects the oppression deemed likely to follow from combinations among the large States against the small ones, nothing of the kind has been actually felt. Public questions have always taken a wholly different shape, in which considerations of sectional or party policy have pre-

vailed to unite States together, without discrimination as to size or relative numbers. The great States seldom act together. For many years, Massachusetts and Virginia were leading States in opposition to each other; and of late, New York, Pennsylvania, Ohio, and Virginia, have rarely been guided by any common or even by any settled policy whatever. There seems to be scarcely cohesiveness sufficient among the individual citizens of those States, to counteract the dividing tendency of national party organizations. In this particular, it may be seen that the Presidential election is exerting a greater tendency towards centralism and consolidation, than any other provision of the Constitution. But of this we propose to treat in its proper place.

What we have said, thus far, of the little reason which experience has shown to justify the apprehensions entertained by the small States of the power granted to the large ones by the Constitution, should, however, apply to the manner in which the elections under it have been thus far regulated. We are not at all sure, that a variation in the form of choosing the representatives in the States would not be likely to realize all they feared and more. This variation is very simple, and the example of adopting it has in fact been already most imprudently given by several of the smaller States. We allude to the practice of electing all the representatives, to which one State is entitled, upon a single general ticket, instead of apportioning them among several districts, each containing no greater amount of population than the ratio of representation adopted by Congress may require. The temptation to parties to adopt a rule, which would throw power into their hands in large masses, will naturally be great. We are much surprised, that it has thus far excited very little attention among them. A brief calculation, only, would be necessary to show, that a combination between three or four large States, held together by the bond of a party organization, may in this manner, at some future time, control the whole policy of the Union. So serious do we consider this danger, that we should not regard as premature, any effort which should, as soon as possible, be made to provide against it by a prospective remedial law.

So far as our observation has extended, we have been led to the belief, that farsightedness is the rarest quality found among statesmen. We think the speeches in these volumes

do not tend to shake the solidity of this judgment. And the entire course of debates in every one of the ratifying conventions, goes strikingly to confirm it. The reason probably was, in the present instance, that the framers of the constitution were standing in too great proximity to the details of the system, to be able to assign to each its proportionate importance relatively to the rest. They were, moreover, generally men of a practical rather than philosophical turn of mind, who brought to their work a tolerably exact knowledge of the machinery they had been accustomed to see in operation in the States which they represented, without possessing the generalizing faculty necessary to comprehend the full force of the modifications which they were now contriving upon a large scale. It has followed, from this, that, in some of the particulars where the Constitution was considered as most deficient, there has never arisen a shadow of difficulty, whilst in others, which were held to be the most skilfully matured, the action of the system has been wholly at variance with the intention. We shall endeavour to illustrate this more fully by and by.

Another reflection which suggests itself upon reading these debates, is occasioned by the prevailing tone of the speakers, respecting the evils of a democracy. This, doubtless, grew out of the reaction in public opinion, caused by the experience then fresh upon them, of the latter days of the Confederation. Of one thing we are very confident, that no public man in the United States during the present century, could have ventured to express, with impunity, such sentiments of unlimited dislike to democracy as are here reported. And these came, in many cases, from the lips even of persons who have since made a figure as leaders of that party, which has prevailed under the Constitution by unfurling the banner of democracy. We should like to know, what chance any of our young and aspiring politicians would stand of promotion at the present day, who should have the courage to express such opinions as we now cull, almost at random, from the volumes before us.

Edmund Randolph, for example, expresses himself as follows ;

“ He observed that the general object was to provide a cure for the evils under which the United States labored ; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy ; that some check was

to be sought for, against this tendency of our governments ; and that a good Senate seemed most likely to answer the purpose." — p. 758.

Again, in another place, in organizing the Senate, he was "for the term of seven years. The democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the National Legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the Executive, will, in all cases, be necessary. A firmness and independence may be the more necessary also in this branch, as it ought to guard the Constitution against encroachments of the Executive, who will be apt to form combinations with the demagogues of the popular branch." — p. 852.

So Mr. Hamilton, upon the same subject ;

"Gentlemen suppose seven years a sufficient period to give the Senate an adequate firmness, from not considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England States, whether experience had not there verified the remark." — p. 887.

One of these New England gentlemen, no other than Roger Sherman, went to the length of

"opposing the election of the first branch of the National Legislature, insisting that it ought to be by the State Legislatures. The people, he said, immediately should have as little to do as may be about the government. They want information, and are constantly liable to be misled." — p. 753.

But, lest these persons should be considered as expressing the sentiments of the aristocratic extreme in the Convention, let us turn, for comparison, to the doctrines then held by men who have since been constant favorites with the democracy. What said Mr. Madison himself ?

"Experience had proved a tendency in our government to throw all power into the Legislative vortex. The Executives of the States are in general little more than ciphers ; the Legislatures omnipotent. If no effectual check be devised for re-

straining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable."—p. 1128.

And this in support of a motion to make an Executive during good behaviour. Again, he says in another place ;

"Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and if her authority had been admitted, could have pursued that interest at our expense. We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is, that where a majority are united by a common sentiment and have an opportunity, the rights of the minor party become insecure. In a republican government, the majority, if united, have always an opportunity."—p. 806.

Mr. Elbridge Gerry went much further. He says ;

"The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience, that they are daily misled into the most baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. . . . .

He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the Governor, though secured by the spirit of the Constitution itself. He had, he said, been too republican heretofore ; he was still, however, republican ; but had been taught by experience the danger of the levelling spirit."—p. 753.

And upon the plan of electing a Chief Magistrate by the people, he says ;

"The popular mode of electing the Chief Magistrate would certainly be the worst of all. If he should be so elected, and should do his duty, he will be turned out for it, like Governor Bowdoin in Massachusetts, and President Sullivan in New Hampshire."—p. 1149.

We have plenty of these quotations, if more are required. It must be borne in mind, that these two last-named speakers

were, in the year 1813, elected by the popular party in the United States, to fill the two highest offices in their gift. Had it been even then generally known, that they had entertained and expressed such opinions as we have quoted, we incline to doubt whether they would have met with so high a reward for their services. The vibration of the pendulum was, however, at the moment of the Convention, at one extreme with the whole country, from which it has since been passing gradually to the other. "The members most tenacious of republicanism," Mr. Hamilton observed, "were as loud as any in declaiming against the cries of democracy." If we compare their doctrine, then, with that now prevalent in both of the political parties of our day, and notice the eager contention going on between them as to which shall be most democratic, in name as well as in conduct, we can then form a tolerably accurate idea of the change that has come over public opinion in the interval.

In truth the word *democracy*, as it was then understood, was never a favorite with any class of statesmen in the earliest period of our national government, not excepting even Mr. Jefferson himself. They had seen enough of unbridled popular strength, to be convinced that the voice of the majority was not always a safe immediate rule of action; and it was hence the great object of the proposed form of government, so to divide power into many portions, and to combine opposite movements, as to insure a deliberation, skill, and weight of personal character, ample enough to guide the destinies of the country prosperously. This result, which they were aiming to bring about, they loved to denominate a *republic*, and not a democracy; a republic, which whilst it should faithfully adhere to the general principle of reflecting the popular will, when conveyed through prescribed channels, was to be carefully guarded from experiencing the evil consequences attending the momentary fluctuations of popular feeling, and the unsteadiness and contradictory action which they occasion. It was to be the realization of that *beau idéal* of government, a union of systematic energy with the largest practicable individual liberty. Thus far the operation of the system has fully realized all the expectations of its framers, but we must confess, that we do not regard as a very favorable symptom for the future, the prevailing disposition, on all sides, to change the name by which its founders preferred to call it.



We have already remarked the diversity of opinion that existed among the members of the Convention, upon the theory of government in the abstract. This difference, which extended on one side from the admiration of a monarchy to that of the simplest form of representing a people, and on the other from the advocates of a perfect centralization of power to the furthest practicable distribution of it among confederated States, so far from producing its ordinary effect to paralyze action, had, in this instance, a tendency to improve and mature the object which all had equally a desire to secure. The reason was, that, however opposed the gentlemen might be in opinion, they were all under the influence of the right spirit. There were some, it is true, who seceded from the Convention, and others who declined to sign the form of constitution that was ultimately recommended, but in this conduct they appear to have been directed by scruples, honestly entertained, that they were exceeding their powers, and not by any factious or unworthy motives whatsoever. Several of those who refused their signature, were afterwards among the warmest defenders of the system, when submitted to the ratifying Conventions of the States. Mere demagogues were a class of persons unknown in that body. And it follows, that the speeches we read bear the simple, business-like character, that becomes statesmen and their occupation. The curse of our present mode of legislation, addresses to constituents to operate upon a popular election, was not then felt; a misfortune which, if it must be regarded as having been avoided by keeping the doors closed, we feel slightly tempted to regret was ever entailed upon us by the adoption of an opposite practice. Much of the debating was conducted in that tone, just enough elevated to keep it above the familiarity of conversation, and yet not to prevent the rapid interchange of ideas, which is the most effective of despatch in deliberative bodies, but which the taste for elaborate harangues has now gone far to put out of fashion. It is probable, that the style of declamation has very much improved under the change, but we fear this advantage has been gained at the cost, not seldom, of good sense, and sound logic, and relevancy of purpose. There is but a single instance of a long, discursive speech, that of Luther Martin, which, for that reason, neither Mr. Madison nor Judge Yates inclined to report in full, but which, if we may judge of its substance by his report to the

Legislature of Maryland of the doings of the Convention, must have been a very different sort of diffuseness from that which now bears the name.

Various as were the sentiments upon government of the different members, this did not prevent them from cordially acquiescing in a distinct and very reasonable practical proposition. Mr. Madison tells us, in a note, that

“An independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community, seemed to be generally admitted as the true basis of a well constructed government.”

It would be difficult to name any thing that could have been better than this for the starting point of the Convention. When it had been once agreed upon, nothing remained but to arrange the details by which the action of the proposed system was to be defined. In this process, it is evident, from the result, that almost every shade of belief had some effect in modifying its provisions, and that thus, by a fusion of portions of these contrary doctrines into a common mass, the Constitution, like the shield forged for Æneas, came out much the better for the variety and the mixture of ingredients of which it was composed.

The Legislative department of the government, which is provided for by the first article of the Constitution, appears to have been by far the most difficult portion of the work to bring into form, as it is the one by which, in point of fact, the powers of all three of the departments are measured and regulated. For inasmuch as this is the source of organization, it is the seat of the force which sets in motion the Executive and the Judiciary. In modelling that department, there was great danger of falling into errors of opposite kinds. It might, for example, have been made too powerful for the safety of the respective States, or for the strength of the co-ordinate branches. We think experience has gone far to prove the skill by which these opposite kinds of risk were made to balance one another. It appears to us the best part of the instrument, as it is now understood in its amended form; far better, indeed, than the organization of the Executive department.

The mode in which the President should be elected, the powers which he should exercise when chosen, and the term of time during which any single individual should exercise

those powers, were topics thoroughly debated in the Convention. The result of their deliberations was the second Article of the Constitution. It is well worth the trouble to notice the degree of satisfaction which this part of their labors gave them. It was mentioned in "*The Federalist*" as little open to objection, and therefore needing no defence; and it met with very gentle treatment in the ratifying Convention, when almost every other part of the Constitution was subjected to the most violent attacks. Yet scarcely a feature of the whole system was earlier discovered to need remodelling; not one has been constantly attended with so great difficulties in practice, or threatens so much even now to disturb, if not ultimately to overturn, the whole edifice of government to which it belongs.

The original section which provided for the election of a President and Vice-President, would have been an excellent one, if it had only been predicated upon an accurate estimate of human nature. As it was not, it failed. It is very clear, both from the section itself and the temper of the debates, that there was no intention on the part of the framers of the Constitution to make the election of President an issue between individuals as candidates before the people. The intermediate agency of a body of Electors, themselves to be chosen by the people, was called into being to prevent it. That these Electors were designed to have and exercise a certain degree of discretion in the choice of individuals, is manifest not only in the care exercised to prevent concerted movements between the colleges, and in the provision by which no distinction was to be made in the votes for President and Vice-President, but also by the opinions frequently expressed in the volumes before us, that there would seldom be elections made by the Electors, by reason of the scattering of the votes, no single individual being likely very often to receive the suffrages of a majority of Electors. The practice under the Constitution has not corresponded to any such design. The Electors have, for the most part, performed an office merely mechanical, which might be dispensed with entirely without essential injury to the instrument, simply by counting the votes of the majority of each State in the United States, as equal to the number of its Senators and Representatives in Congress, and then adding together these several numbers. Could the original idea have been executed, we

should have much preferred it. But the effect of it would have been, vastly to increase the consequence of the Electoral Colleges, by imposing upon them an immense responsibility. Unluckily, it contemplated a sort of Saturnian reign, when men would cease to be more than moderately ambitious, when parties were not to contend with each other for the mere possession of power, and when the people would be more willing to give their confidence in advance to the agents selected by persons of their own choice, than they commonly prove to be. Such results were not destined to be among the materials of our experience, so far as we have yet learned it. The fourth election, held under the third article as it originally stood, convinced every one that it was not merely impracticable, but also dangerous. It was consequently amended into the shape in which it now stands. We now understand by the provision, that Electors are persons expected to have little or no discretion in performing their duty, but on the contrary, to do a prescribed act, with no greater advantage to the country than would follow, if the people were to do it themselves, unless it may be considered an advantage, that federal numbers give to the slaveholding States a greater relative weight in deciding the election, than they would enjoy if the votes of free white male citizens throughout the Union were to be counted. So far as the framers of the Constitution may have intended to raise up a check over the tendency to popular heats and violence in the election of President, they must be considered as having utterly failed.

It must, however, be admitted, that our experience of the effects of this important part of the Constitution, has been small in comparison with what it may be in future. It is far from improbable, that the difficulty of effecting any election by the Electors, may increase, with the spread of the country and the equality of local influence among many candidates, to so great an extent, as to make the House of Representatives in fact the Electoral College. Of the fatal effects of this upon the public morals, should it occur, who can doubt? We will not, however, at this time, dwell upon a mere contingency, but rather pass on to a question more immediately interesting. We mean, that of the reëligibility of the President. No topic was more fully discussed in the Convention than this. The argument on both sides was pressed with acuteness and ability, and yet the decision was favorable to

the practice. After fifty years of trial, the propriety of this decision is still disputed, and circumstances have of late given a very decided preponderance in the public mind, to an opposite doctrine. General Washington and Mr. Jefferson, by their example, dictated a practical limitation of the clause to a reelection for but a single term. There have been but three instances of failure in reelecting a President once. But the injurious effects upon his whole system of policy during his first term, of allowing to a President the chance of reelection, have been so strongly felt, that the present disposition seems to be favorable to cutting it wholly off. We have yet to know, whether the inconveniences likely to follow the proposed change, will not be as great as those which it is designed to remedy. Some of the objections, as stated in these volumes, are as follows.

Mr. Gouverneur Morris said ;

“The ineligibility tended to destroy the great motive to good behaviour, the hope of being rewarded by a reappointment. It was saying to him, ‘make hay while the sun shines.’” — pp. 1124–5.

“In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineligible a second time, had been devised. This was as much as to say, we should give him the benefit of experience, and then deprive ourselves of the use of him.” — p. 1195.

“Mr. Morris was against a rotation in every case. It formed a political school, in which we were always governed by the scholars and not by the masters.” — p. 1203.

Mr. Rufus King said, that he

“did not like the ineligibility. He thought there was great force in the remarks of Mr. Sherman, that he who has proved himself most fit for an office, ought not to be excluded by the Constitution from holding it.” — p. 1146.

Mr. Hamilton

“liked the new modification, on the whole, better than that in the printed report. In this, the President was a monster, elected for seven years, and ineligible afterwards ; having great powers in appointments to office ; and continually tempted, by this constitutional disqualification, to abuse them, in order to subvert the Government.” — p. 1507.

Without pretending to controvert such powerful arguments as these, we cannot, in view of the events of the last few

years, fully assent to the conclusions they arrive at. We much fear, it will ultimately appear, that the organization of the Executive department, whether the President is so for four years only, or is reëligible, is the Pandora's box, from whence all evils have escaped, to plague the world, and only hope is left at the bottom to console us.

The principle of keeping the three great branches distinct and independent of each other, was fully acted upon by the members of the Convention. But there are remarkable exceptions, which deserve notice in a general review of their labors. A check upon the Legislative power was placed in the hands of the President, which has proved, in some cases, a most formidable instrument for controlling its action. In like manner, the power of appointment to office, in itself strictly an Executive power, was subjected to a check from the higher branch of the Legislature. And both, Legislative and Executive departments, are subjected to the exercise of a power of revision, lodged in the hands of the Judiciary. These are the balances of the Constitution, and they have been distributed with a great deal of art. Great apprehensions were entertained in the Convention, that the Legislative branch would, notwithstanding their efforts to provide the contrary, acquire a decided preponderance over the coördinate departments. At times, there have been appearances to justify such fears; but, on the whole, the tendency has not been very marked on any side. A very popular President is quite as likely to encroach upon the province of Congress, as to have his own encroached upon. With an unpopular one, the case is otherwise. Yet the appointing power is always in his hands, and that has no insignificant importance in regulating the action of both branches of Congress; so that, after all, it may reasonably be doubted, whether any attempt to alter or amend the delicate mechanism of the system, would not be productive of more unexpected injurious consequences, than are worth hazarding in exchange for the benefits that might be gained by it.

Of all the departments, the most feebly constructed, as it seems to us, is the Judiciary. Without any popular strength to rest upon, with all the antagonist passions in the State organizations to resist, and obliged to rely, in a great degree, upon the coöperation of both of the other branches, in order to maintain the authority of their decisions, the Judges have

no power to sustain them, excepting the weight of their character, the general rectitude of their principles, and the absence of all strong inducement to combinations against them. If the President declines to enforce the execution of their decrees, or to punish the violation of them, or the Legislature refuses to abide by their construction of the Constitution, we are not able to perceive, in the system, any alternative but submission. The Court cannot, indeed, be abolished by act of Congress, but it may be reorganized, and the power of reorganization is almost as dangerous as subversion. Then, by the course of duty assigned to it, it is perpetually liable to come in conflict with the laws of the States when they transcend the limits of the Federal Constitution, with no certainty that its judgments will be deemed binding, and without means to enforce them if they are not. The natural consequence of all this must, sooner or later, be a bias upon the minds of the Judges to evade the settlement of difficult points, and take refuge in collateral questions, rather than to come forward with the frankness and independence which ought ever to distinguish a high Court of Justice. It is very true, that thus far the apprehensions we express have been justified to a very trifling extent by experience, but we are as yet only at the beginning; and we have no right to expect that a Marshall will often preside for thirty years together, to unite in his person the authority of moral and intellectual power with the dignity of official station.

After an uninterrupted labor of four months, the work was at length matured, and the Constitution of the United States received, on the 17th of September, 1787, the signatures of representatives from twelve out of the thirteen States. Of this number, nearly all had contributed something to the common object, but there were two or three who had taken so leading a share in the work, that it is impossible ever to allude to it without paying them the tribute of a particular notice. One of these was Alexander Hamilton. Among all the remarkable men of the Revolution, we know of no one, who, for the attributes which usually mark genius, was more distinguished. He was endowed with a singularly comprehensive mind, which enabled him to originate forms of government and systems of administration, whilst he united with it an intrepidity and an energy equal to the task of putting them in execution. He was a politician and a statesman,

without possessing those finer and more delicate feelings of lofty morality, which, while they do honor to a public man, sometimes go far to impair his means of usefulness. To Hamilton, men appeared always as instruments to be moved, and not as accountable beings, and theories of government or modes of policy were regarded simply with reference to the ends which might be attained by applying them. The consequence was, that however bold the features of his system were, and however decidedly beneficial in its application to the interests of the country, there was always a slight taint of earthly morality about it, which deprived him of the share in the public confidence, which he may now be regarded as having deserved. Peculiarly fitted for the difficult duty of calling a government into being, he was capable, at the same time, of understanding the bearings of the most comprehensive principles, and of entering into its minutest practical detail. Yet there is this remarkable peculiarity about the history of Mr. Hamilton, that, whilst he acted a most important and honorable part in a critical period of our national affairs, there was not, probably, an instant of his life in which he enjoyed the perfect sympathy of the mass of the people of the United States. A native of a different soil, he appears to have come to America to serve an important end in engrafting upon our institutions certain features of energy and stability, which they did not naturally possess, and then to vanish from the scene, leaving no popular regrets behind. He was never a man of concealments, nor, possessing as he did, that consciousness of superiority, the inevitable attendant of genius, did he always take enough pains to disguise his modes of exerting it over others. He was no demagogue, and entertained, perhaps, a too great habitual contempt of the popular judgment. The consequence was, that the people would never kindle at his name, and that his most masterly movements always experienced a vehemence of resistance, which might have been softened, if not turned aside, by a more conciliatory deportment. This compelled him to rely, for the execution of his projects, upon the authority of great popular reputations, or assemblies. The countenance of Washington was indispensable to him before the people. The moment that he lost it, his position ceased to be commanding. In his opinions upon government, it should never be denied, that he leaned strongly towards the monarchical system, as it is seen to



exist in England ; but he was a man of too good sense not to understand, that the spirit of America could not be reconciled to adopt it. However decided his own convictions might have been, he never sought to press them further than to incorporate, in the American project, some portions of its vigor. Yet, even for doing this, he has been subjected to great severity of attack, and Mr. Jefferson, with his customary asperity against political opponents, and Mr. Madison, with his more guarded but equally decided hostility, have not spared efforts to throw, because of it, much public odium upon his character. We think this course as ungenerous as it is undeserved. Surely, if our country deserves the title it boasts of, that of being the freest on earth, abstract opinions should always be allowed full latitude in the utterance. And no doctrine concerning government, that proceeds from honest convictions, should be made a subject of reproach to any one, so long as no action is meditated to be based upon it. Mr. Hamilton doubted the efficacy of a purely republican form, to secure the permanent happiness of a people. Very well. So did General Washington. So did John Marshall. So have many of the best statesmen and patriots that have lived among us. The same doubts have, at all times, existed, and still do exist, in the bosom of American society. But they work no injury to our system of government, because they are mere opinions. And not a man can be found, who is not ready to stand by that system as long as it will work, let his apprehensions be what they may. We, therefore, see no more justice in attacking Mr. Hamilton, or anybody else, for entertaining them, than in attacking Mr. Jefferson, as he also has been attacked, for his partiality to an opposite extreme.

There is one feature of Mr. Hamilton's character which, perhaps, deserves to be one moment longer dwelt upon, because it was in him, as it is in most persons who possess it, the parent of much questionable political morality. We fear it is, at this time, as common here as in any part of the world, and that it is rather spreading among us instead of diminishing. Let us illustrate what we mean, by quoting a sentence from the present volume. Mr. Hamilton upon one occasion said ;

“ We must take man as we find him ; and if we expect him to serve the public, must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our

errors. He thought the remark of Mr. Gorham a just one. It was impossible to say what would be the effect in Great Britain of such a reform as had been urged. It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the crown, which went under the name of *corruption*, an essential part of the weight which maintained the equilibrium of the Constitution." — p. 938.

Chief Justice Yates reports the same observations somewhat differently ;—

“ In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Take mankind in general, they are vicious ; their passions may be operated upon. We have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it was necessary to support a good government. We have taken up many ideas upon trust, and, at last, pleased with our own opinions, establish them as undoubted truths. Hume’s opinion of the British constitution confirms the remark, that there is always a body of firm patriots who often shake a corrupt administration. Take mankind as they are, and what are they governed by ? Their passions. There may be in every government a few choice spirits, who may act from more worthy motives. One great error is, that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest ; and it will ever be the duty of a wise government to avail itself of those passions in order to make them subservient to the public good, for these ever induce us to action.”

The man who could give utterance to such a strain of remark may have been a great politician, but he was not a good moralist. To such a man Sir Robert Walpole might easily appear the paragon of statesmen ; Sir Robert, who openly declared that in his belief every man had his price, and yet who used his ill-gotten influence for the best interests of the king and country he was serving. There may be, and doubtless is, great truth in every unfavorable estimate of human nature ; though it is equally likely that there will also be much of falsehood. But the good part of man’s nature is not likely to have a fair chance of development, when the hypothesis is once assumed as true, that it does not exist, or that it must be made subordinate to the bad one. Political men are too apt in all countries to rest satisfied with the narrow view, and hence

their own minds very soon share something of the taint which they are always on the watch to perceive in those of other men. For our own part, we would rather that a higher standard of public virtue be professed, even where there is not always perfect success in attaining to it. We would rather that a statesman should not avail himself too much of the passions of men even for a good purpose, and should strive a little more to arouse their principles. We would rather that he should himself set the world an example of noble aspirations, that his fellows might respect and admire even when they felt unable to follow it.

Such was, however, the texture of Mr. Hamilton's mind as we see it in the extract already quoted ; and the consequence will be that for ever after posterity may adjudge him to stand in the very front rank as a practical politician, but they will refuse to put him on a level with the best of our patriots. There was in him a mixture of correct moral conception and laxity of practical application, which must qualify our respect for his memory. Although a great man, he has gained no solid hold upon the American heart, and his lamentable end only serves to confirm the conviction which grows out of the observation of his life, that he knew too distinctly what was positively right, to admit of our palliating or excusing his fault in conduct absolutely wrong.

The other gentleman of whom we would speak is James Madison. He belonged to a different order of human beings. Possessing a mind far more of a meditative cast than that of Hamilton, he inclined to study measures in their abstract principles, and the movement of life through the primal impulses which occasion it. He was a student of facts rather than of men, therefore much better calculated for the exposition of a rule of action than for the direction of it when it was to be executed. His temperament was calm, deliberative, perhaps slightly deficient in energy. He possessed a good judgment, with enough of expediency to suffer it to be biased by the impetuous force of such a bold speculator as Mr. Jefferson, whilst it exerted a more than compensating influence in restraining that boldness from making itself felt in unfortunate action. Better calculated for counsel than for the direction of events, he will appear to posterity a greater man as a framer of the Constitution in the Federal Convention, and as a legislator in the first Congress convened after it was adopted, than as a member of

the Cabinet of Mr. Jefferson or as President of the United States. When called upon to act a part in a great system of political measures devised for the purpose of securing the ascendancy of his party, he approved himself a faithful lieutenant to a bold captain ; but when himself afterwards promoted to the chief station, he was destined to prove, in the course of the trial to which he was put, the truth, that it is far easier to counsel than to perform. The most marked defect which he exhibited as President was in the knowledge of men. His most characteristic merit was his sound sense. He was fated to ascertain by his experience in the executive station, that doctrines which sometimes best aid a party to mount to power, are not the most serviceable in the use of it. He had none of the false pride which put him above profiting by his lesson. The consequence was, the surrender of the system of national policy introduced by Mr. Jefferson, and the decided, though tacit, return in the last period of his administration to all the doctrines of the Washington school.

On the whole, there are few men who deserve to be regarded as more fortunate in their lives than was Mr. Madison, if indeed that may be called good fortune which was rather the result of capacity and prudence acting upon favorable circumstances. Many persons have had more than he without succeeding in using it as well. He fell into the exact position best calculated for the developement of his powers, and he filled it skilfully. The task of assisting to found a system of government for a people, in itself one of the most exalted that the world can afford, was one which all the habits of his previous life, as well as the natural turn of his mind, fitted him to perform. Without having the vigor or originality of Hamilton, he possessed other qualities which in his situation were quite as valuable. He could by his moderation act as a mediator of differences, a softener of extremes in opinion, through which virtue he not only gained a useful power over his own immediate circle of friends, but he acquired the respect and esteem, if he did not always soothe the violence, of those who were opposed to him. He was called to administer the government he had taken so large a part in establishing, at a moment when its strength was more severely tested than it has been at any other time before or since. Foreign war and domestic discord came together upon him in a manner that would have tried the nerves of the strongest man. And although, upon

looking back, we find it impossible not to censure him as wanting in the vigorous preparation which we should expect in such an exigency ; yet the fact that all difficulties were ultimately overcome, that the internal disaffection accomplished no harm, that his hold upon the people carried us through the danger, and, lastly, that an honorable peace and great prosperity subsequent to it crowned his labors, will go very far to place his name high in our annals upon the list of our capable, honest, and successful statesmen.

We have already in a preceding part of this article noticed the fact, that these volumes present two distinct matters of historical interest, the one subsidiary perhaps, but scarcely inferior in interest, to the other. We very much fear that the period of the confederation will never receive from the young students of this country the share of attention which its importance would seem to require. We have already so far transgressed the usual limits of an article, that it is impossible for us at present to go into any explanation of our views. But one remark we must be allowed to make ;—If there are any persons who desire to understand the origin, and trace the movement, of the parties that have agitated this Union during the past half century, they must begin here. The first part of the *Madison papers* will furnish a partial insight into the system of policy which has always marked the southern section of the country ; a system which has, for a considerable portion of the period mentioned, preponderated in the national government. Although not in itself to be relied upon as a guide to a correct judgment, it is so rich in materials of comparison with documents from other quarters, that it is to be hoped, when placed in the hands of some future philosophical historian, our posterity may obtain the means of understanding the truth.

The Constitution of the United States has, thus far, by the admission of all parties, established a far better practical form of government than was anticipated by any one when it was made. But it would be a curious and not unprofitable task to compare the operation of the system, as it is now understood and practised upon, with what it was during the early administration of it, and with the declared intentions of its framers. We think that some deviation could be shown, that does not promise well for the future. But in this opinion we would not venture to be positive. For, after all, there are great obstacles in the way of correct judgment by persons who witness and

take interest in a train of present events. The tendency always is to give undue weight to passing appearances, and to assign a durable effect to what may only prove a temporary disturbing cause. An energetic and highly popular chief magistrate can give to his station a moment's preponderance in the government, which will vanish with the accession of a person of different character. The blustering of a few state politicians may sometimes create uneasiness respecting the strength of the general government, which the course of events in a short time will prove wholly superfluous. Events like these only go to show how very nicely the balances of the system were adjusted, and what a self-correcting vitality actually resides in it, which proves the wisdom of its framers. But there are other indications which are not quite so promising. Across the disputed land of strict construction and consolidation, of state rights and centralism, of slavery and of free labor, we think we perceive the elements of a storm which will shake to its centre, if it make not a wreck of the fair fabric of our present institutions. The single element which has steadily gained ground of all the others, and which involves in it the destruction of almost every balance in the Constitution, is the democratic element, the very one which, as we have seen, it was the great object of its founders to put in check. And, strange as it may seem, the path which it has chosen for itself is the one which appears to have been the least anticipated ;— we mean that through the election to the Presidency. To that every other part of the system is now made in a great measure subordinate. And, instead of being regarded as the mere Executive head, charged with the duty of carrying into effect the laws, the President is looked to, by the great body of the people, as a person whose abstract sentiments upon every subject of public interest ought to be declared and made the subject of rigid examination. Should the practice of cross-questioning every candidate for the office become settled, the time will not be far distant when they will take the field in person, and solicit the people's votes. This can hardly fail to be attended with serious consequences to the Constitution, for it will have the effect of drawing the Executive and the people into a close union at the expense of the other departments of the government, as well as of consolidating the power of the national chief magistrate at the expense of that of the States. And the end may very naturally be a pure democracy, in which the

President represents the people, and becomes solely accountable to them for his conduct, and the legislature and the judiciary play very secondary and insignificant parts.

It cannot be denied that Congress has been of late years doing something to hasten this state of things, by the turbulence, disorder, and uselessness of its proceedings. The Senate has more than once become a nursery of faction, and the House of Representatives a scene for the lowest and most disgraceful brawling. Such things cannot long happen in any country with impunity, much less in ours, where the *cui bono* is constantly upon every tongue. Already has the constitution of the Senate been well nigh overturned by the establishment of the right of instruction. And nothing further remains but to settle the practice of universal resigning whenever public servants follow the dictates of their own judgment in opposition to the popular voice, and the Constitution, from being the complicated republican form which its framers designed to make it, will be a simple machine of more unmixed democracy than was even the government of Athens.

There is, however, a recuperative energy in the breasts of the American people, which may save them from long suffering under any evil which they themselves create. However gloomy the prospect may sometimes be to the true patriots of the land, they should never lose sight of the fact that there was one moment in our history, when it looked a great deal worse than we now see it, and yet all was not lost. The hour of darkness was but the foreshadowing of a bright and glorious dawn, when, under the superintending guidance of wisdom and integrity, the people enjoyed the full harvest of their industry, and the banner of the Union became the symbol of honor and of strength. We have not yet quite parted from those brilliant days ; but it cannot and ought not to be concealed that our progress of late years has been somewhat downward, and that a new system of political morals is in the course of adoption throughout the extent of the United States, which threatens to drown all the landmarks of our ancient faith in the one great ocean of expediency. We trust there are young minds which are in secret working themselves free from the dross of this corruption, and young hearts practised to beat not merely with the casual impulse of an honest patriotism, but also with the regular vibrations of an unconquerable principle ; a principle not more to be shaken by the "*civium ardor prava jubentium*," than if it

was called to resist the “*vultus instantis tyranni.*” To such, if such there are, we bid God speed, for we fear that it is no ordinary trial which awaits them.

---

ART. III. — *The Life of Commodore Oliver Hazard Perry.* By ALEXANDER SLIDELL MACKENZIE, U. S. N. New York : Harper & Brothers. 2 vols. 18mo. pp. 322 and 270.

WE have seen it asserted in the public prints, that an order has been issued by the Lords of the Admiralty to print in a cheap form, for distribution amongst the seamen of the Royal Navy, those time-honored sea songs of Dibdin and others, by which the heart of the mariner is stirred as with the sound of a trumpet. The wisdom of this measure can only be fully appreciated by those who have watched a group on board of a man-of-war, listening with open mouths to the sonorous voice of some favorite captain of the fore-castle or main-top, as he gives forth in a kind of chant (all sea tunes resemble each other) the fervid national song, whose spirit nerves the faintest heart, and makes the stoutest tremble with eagerness ; — the pet boys, or *chickens* as they are affectionately termed, nestled, each one under the wing of his guardian, the landsmen forming a respectful outline to the group, and some officers mounted on a convenient gun, or a topgallant fore-castle, partaking in the pleasure and excitement of the scene. This is a favorite amusement of a pleasant evening on board a vessel of war at sea, and no one will doubt that the guns of a ship will be better served whilst the effect of such a celebration of former victories still lingers in the hearts of those who have heard it.

What these songs of the sea are to the untutored tar, well-written biographies of distinguished naval men are to the educated officer. Such an one is that before us, and Mr. Mackenzie has rendered an essential benefit to the navy and country, by holding up to her young aspirants the example of one of the nation's most gallant sons, stimulating them by the most powerful of all influences to the high duties of patriotism, valor, and self-devotion. Mr. Mackenzie has enhanced